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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BOARD OF TRUSTEES OF THE
CONSTRUCTION INDUSTRY AND
LABORERS HEALTH AND WELFARE
TRUST; THE BOARD OF TRUSTEES OF
THE CONSTRUCTION INDUSTRY AND
LABORERS JOINT PENSION TRUST; THE
BOARD OF TRUSTEES OF THE
CONSTRUCTION INDUSTRY AND
LABORERS VACATION TRUST; and THE
BOARD OF TRUSTEES OF THE
SOUTHERN NEVADA LABORERS
LOCAL 872 TRAINING TRUST,,

Plaintiffs,

v.

SOUTHWESTERN CONSTRUCTION,
INC., a Utah corporation,

Defendant.

CASE NO.:

COMPLAINT

Plaintiffs allege:

1. This action arises under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001-1500 and the Court has original jurisdiction pursuant to 29 U.S.C. § 1132(e). Venue is proper pursuant to 29 U.S.C. § 1132(e)(2).

2. The Plaintiffs are the Boards of Trustees of the Construction Industry and Laborers Health and Welfare Trust, the Construction Industry and Laborers Joint Pension Trust, the

1 Construction Industry and Laborers Vacation Trust, the Southern Nevada Laborers Local 872
2 Training Trust (collectively referred to as “Trust Funds”) and are fiduciaries for purposes of
3 ERISA.

4 3. Southwestern Construction, Inc., a Utah corporation, acted as an employer within
5 the State of Nevada employing persons (“Covered Employees”) who perform work covered by a
6 project labor agreement (“PLA”) between Southwestern and the Construction Industry and
7 Laborers Union Local 872.

8 4. The PLA requires Southwestern to make employee benefit contributions to the
9 Trust Funds on behalf of its Covered Employees.

10 5. The Trust Funds are ERISA employee benefit trust funds that provide benefits to
11 Covered Employees.

12 6. The Trust Funds are established by Trust Agreements (“Trust Agreements”).

13 7. Pursuant to ERISA and the Trust Agreements, Southwestern is obligated to make
14 its books and records available for contract compliance review (“Audit”).

15 8. Southwestern has failed to respond to the Trust Funds’ requests to make its books
16 and records available for Audit.

17 9. The Trust Funds have insufficient facts, records or information available to
18 calculate amounts due.

19 10. If an employer signatory to the PLA fails to make its books and records available
20 for an Audit, the Trust Agreements and the Trust Funds’ Collection Policy and Procedures permit
21 the Trust Funds to presume contributions owed equal the higher of (1) the average annual
22 contributions reported by the employer over the three years prior to the audit period or (2)
23 \$100,000 for each year covered by the attempted audit.

24 **FIRST CLAIM FOR RELIEF**

25 Equitable Relief – 29 U.S.C. § 1132(a)(3)

26 11. Paragraphs 1 through 10 are restated and incorporated by reference.

27 12. The Trust Funds have repeatedly requested that Southwestern make its books and
28 records available for an Audit as required by ERISA and the Trust Agreements.

1 13. Southwestern has repeatedly refused to make its books and records available.

2 14. The Trust Funds request this Court compel Southwestern, pursuant to 29 U.S.C. §
3 1132(a)(3), to deliver or make available to the Trust Funds all papers and documentation
4 necessary to permit the Trust Funds or their designee to perform an Audit.

5 **SECOND CLAIM FOR RELIEF**

6 ERISA Delinquent Contributions – 29 U.S.C. § 1145.

7 15. Paragraphs 1 through 14 are restated and incorporated by reference.

8 16. Southwestern has failed to meet its obligations to remit employee benefit
9 contributions to the Trust Funds as set forth in the PLA and Trust Agreements, and as required by
10 29 U.S.C. § 1145.

11 17. As a result of its delinquency, Southwestern is liable to the Trust Funds for unpaid
12 contributions, interest, liquidated damages, audit fees and attorneys' fees, as provided by 29
13 U.S.C. § 1132(g), the CBAs, Trust Agreements and applicable Collection Policy.

14 WHEREFORE, Plaintiffs pray for relief as follows:

15 1. For an Order compelling Southwestern, to deliver or make available to the Trust
16 Funds all papers and documentation necessary to permit the Trust Funds or their designee to
17 perform an Audit;

18 2. A judgment against Southwestern, for damages, including delinquent employee
19 benefit contributions, interest, liquidated damages, and attorneys' fees and costs;

20 3. For other equitable relief as provided by ERISA; and
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1 4. For such other and further relief as the Court deems proper.

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3 Dated: February 7, 2020.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

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